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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,206	10/23/2003	Anthony Cubb	RJT-1098-US	2309

7590 01/16/2007  
KENNETH A. RODDY  
2916 WEST T.C. JESTER  
SUITE 100  
HOUSTON, TX 77018

EXAMINER
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KASZTEJNA, MATTHEW JOHN

ART UNIT	PAPER NUMBER
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3739

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/16/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/693,206

Applicant(s)

CUBB, ANTHONY

Examiner

Matthew J. Kasztejna

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 9, 13, 15 and 16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 9, 13, 15 and 16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 October 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/18/06</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Notice of Amendment***

In response to the amendment filed on October 18, 2006, amended claims 1-4, 9, 13 and 15 and new claim 16 are acknowledged. The following new grounds of rejection are set forth:

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 13 and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication No. 2004/0019256 to Cubb et al.

**In regard to claim 1**, Cubb et al. disclose an endotracheal intubation device comprising: an optical housing assembly 40 including having a first end and a second end, a positioning mechanism 58 pivotally attached at the second end, and an elongate flexible image conductor 13 having a distal end portion extending from the first end and a proximal end portion extending from the second end and through positional mechanism; the image conductor consisting of an optical fiber bundle 50a and 50b; a viewing system 53, 59 at an outer end of the positioning mechanism connected in optical communication with the proximal end portion of the image conductor; a

detachable scabbard 10 releasably attached at a proximal end on the first end of the optical housing assembly and having a curved distal end portion terminating in a terminal face; a first conduit 20 extending longitudinally through the scabbard having at least one optically open end at the terminal face of the scabbard, and the image conductor distal end portion extending through the first conduit; a second conduit 30 extending along an outer surface portion of the scabbard defined by a serpentine open channel having a top opening with inwardly curved portions 36 along its length sized and shaped to removably receive and firmly but releasably engage a range of sizes of an endotracheal tube and having two open ends, one of which opens adjacent to the terminal face of the scabbard to provide a predictable exit point and direction to facilitate insertion of the endotracheal tube during intubation; a third conduit 27 extending longitudinally through the scabbard and having, a first open end which opens onto the terminal face of the scabbard and a port at a second open end for connection in fluid flow communication to a vacuum or supplemental oxygen providing source; and an electrical power source and a light source connected with the image conductor to provide an illuminated area adjacent to the terminal edge face of the scabbard and transmission of images of the the illuminated area to the viewing system (see Figs 1-7 and paragraphs 0021-0023).

**In regard to claim 2,** Cubb et al. disclose an endotracheal intubation device, wherein the scabbard is a blade-like structure formed from a polymer material curved generally in the shape of the anatomical contour of a patient's tongue (see paragraph 0021).

**In regard to claim 3,** Cubb et al. disclose an endotracheal intubation device, further comprising: having a lens 44 sealingly disposed over the at least one optically open end of the first conduit and in communication with the distal end portion of the image conductor (see paragraph 0022).

**In regard to claim 4,** Cubb et al. disclose an endotracheal intubation device, wherein the electrical power source is a battery (see paragraph 0022).

**In regard to claim 13,** Cubb et al. disclose an endotracheal intubation device, the optical housing assembly is sized and shaped to be gripped in the hand g-tip of an operator (see Fig. 1).

**In regard to claim 15,** Cubb et al. disclose an endotracheal intubation device, wherein the scabbard is disposable (see Fig. 1).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2004/0019256 to Cubb et al. in view of U.S. Patent Application Publication No. 2003/0195390 to Graumann.

**In regard to claims 9 and 16,** Cubb et al. disclose an endotracheal intubation device but are silent with respect wherein the image conductor comprises a digital image conductor; and the viewing system comprises a LCD screen at an outer end of

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the positioning mechanism. The Handle can accommodate connection of a detachable small and compact color LCD Monitor supported on an adjustable, swivel support. The displays as well as the LCD Monitor display the image of the visual field in full color and picture quality resolution (see Figs. 1-2). It would have been obvious to one skilled in the art to use a digital viewing system comparing an LCD screen in the apparatus of Cubb et al. to provide better picture resolution and display to the user as taught by Graumann and is well known in the art.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-4, 9, 13 and 15-16 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

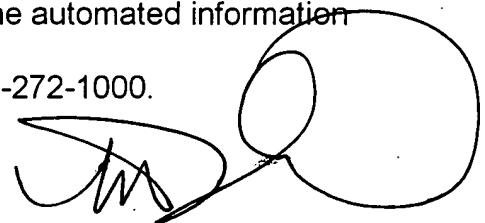
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Kasztejna whose telephone number is (571) 272-6086. The examiner can normally be reached on Mon-Fri, 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJK *MJK*

12/28/06



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